

RD AN No. 3601 (1930-C)  
January 4, 2001

TO: State Directors  
Rural Development

ATTENTION: MFH Program Directors or Coordinators, Program Support Staff,  
State Civil Rights Coordinators/Managers, Rural Development  
Managers and MFH Servicing Office Staff

FROM: James C. Kearney *(Signed by James C. Kearney)*  
Administrator  
Rural Housing Service

SUBJECT: Civil Rights Laws - Accessibility Requirements that apply to the  
Multi-Family Housing (MFH) Program

**PURPOSE/INTENDED OUTCOME:**

Reviews of the MFH program indicate a need to clarify Agency and borrower responsibilities regarding the requirements of section 504 of the Rehabilitation Act of 1973, the Fair Housing Act, and the Americans with Disabilities Act. This Administrative Notice (AN) clarifies that MFH borrowers are responsible to comply with each of these Civil Rights laws. The Agency will facilitate compliance by allowing project resources to be used for that purpose and assuring that no further loans are provided to borrowers who fail to comply. This AN provides direction to Agency staff on monitoring, facilitating and responding to borrower compliance issues. Brief summaries of the accessibility requirements of the Civil Rights laws are provided on **Attachment A. Attachment A-1** summarizes how the architectural accessibility requirements of the Civil Rights laws affect the eligibility for Agency loans.

**COMPARISON WITH PREVIOUS AN:**

This AN addresses issues discussed regarding the Multi-Family Housing Information System Phase 2 (MFIS2) implementation issues presented in expired AN 3552 (1930-C), dated May 30, 2000. This AN also addresses other issues raised in AN 3598 (1930-C) dated December 12, 2000, expired AN 3292 (1930-C) dated November 6, 1996, and expired AN 3360 (1901-E) dated October 2, 1997.

EXPIRATION DATE: December 31, 2001

FILING INSTRUCTIONS:  
Preceding RD  
Instruction 1930-C

## **IMPLEMENTATION RESPONSIBILITIES:**

### **1. Servicing Offices are to monitor borrower compliance as follows:**

*The scope of Agency reviews are limited and do not relieve the borrower of their legal responsibility to comply with all applicable Civil Rights laws.*

**Supervisory visits.** Review the extent of borrower compliance with the physical accessibility requirements of Civil Rights laws during MFH physical inspections, both during the annual “walk-about” inspection and at the time of the full physical inspection. In addition to the items noted on the new physical inspection form, review the ability of the project’s current budgeting and capital planning to implement any improvements identified by the borrower’s transition plan. **Attachment B** provides guidance when completing the Agency’s new physical inspection form. **Attachment B-1** is to be used when notifying borrowers of review findings.

**Compliance reviews.** Servicing office staff designated to conduct Civil Rights compliance reviews will review self-evaluations and transition plans made available by borrowers. **Attachments C and C-1** provide guidance to be used when reviewing borrower self-evaluations and transition plans. While the Agency does not approve either the self-evaluation or transition plan, during the compliance review the Agency will use the guidance of **Attachment C-2** to determine if the self-evaluation and transition plan addresses potential barriers at the project site.

### **2. Servicing Offices are to facilitate borrower compliance as follows:**

*The cost of providing accessible rental housing may be approved by the Agency as an authorized use of project funds. Borrowers are responsible to submit project budgets that address project accessibility needs.*

**Budget approval.** Capital improvements needed to implement a borrower’s transition plan should be included as part of the capital budget portion of Form RD 1930-7, “Multi-Family Housing Project Budget,” when applicable. The Agency may approve compliance-related costs in accordance with normal budget and reserve account approval authorities found in RD Instruction 1930-C. Compliance related costs include reasonable fees and costs for preparing self-evaluations and transition plans.

**Reserve account usage.** The Agency may approve a borrower’s request to increase the required level of the reserve account to assure that sufficient funds are available to address capital requirements of a transition plan. The use of reserve funds to address the capital requirements identified by the borrower’s transition plan may be considered an authorized use of reserve account funds. Loan funds may also be used for this purpose.

### **3. State and Servicing Offices are to respond to borrower non-compliance as follows:**

*Borrowers may become liable for fines and penalties imposed by enforcement agencies, loss of tax credits, or legal actions if found in non-compliance with Civil Rights laws. While the Agency does not impose these fines and penalties, RHS will follow regulatory, supervisory and servicing procedures and loan eligibility requirements when non-compliance is found.*

**Findings of non-compliance.** Borrowers will receive notice of findings of non-compliance determined by the Agency during supervisory visits, compliance reviews, or when reported independently to the Agency. Borrowers should work with the Agency to prevent findings of non-compliance from being elevated to a violation level. Timeframes for compliance will be provided in Agency notices and will vary according to the nature of the non-compliance issue.

**Entering findings of non-compliance into MFIS2.** Supervisory activities and findings have been modified on MFIS2 to allow a more specific reference to the Agency monitoring of borrower compliance with Civil Rights laws. Servicing Office staff will enter findings and violations of both program rules and Civil Rights non-compliance on MFIS2. **Attachment D** is a summary of supervisory activities and their findings that have been modified on MFIS2.

**Eligibility requirement.** For a borrower entity to be considered eligible to receive new loan funds from the Agency in accordance with RD Instruction 1944-E, section 1944.211 (a)(15)(iii), the following must apply:

- The applicant, including the principal partners, must be in compliance with applicable Civil Rights laws in all projects where they are either a borrower or principal partner. For a borrower to be considered in non-compliance with Civil Rights laws for loan eligibility purposes, the borrower's project must be coded on MFIS2 as being in non-monetary default. A project will be coded in non-monetary default on MFIS2 when the Servicing Office has notified the borrower of a violation using the servicing letter process of AN 3598 (1930-C), and the borrower has not addressed the violation to the satisfaction of the Servicing Office within 60 days of the first servicing letter."
- For a borrower to be considered eligible to receive rehabilitation or equity funds, the project to be funded must either be in compliance, or be brought into compliance with applicable Civil Rights laws or physical accessibility standards with the receipt of loan funds.

**Program management related compliance.** See **Attachment E** for guidance on issues brought to the attention of the Civil Rights Staff. For further information, Agency staff may review the December 9, 1999, report signed by then Acting Administrator, Eileen Fitzgerald which documents the Agency's study of handicapped accessibility in MFH projects.

## **Brief Summary of the Provisions of Civil Rights Laws on the Accessibility Requirements**

*The Civil Rights laws covering accessibility have different implementation responsibilities but provide for the protection and nondiscrimination of individuals with disabilities. Borrowers who fail to meet these requirements will make themselves vulnerable to damages and can be required to retrofit their facilities at their expense.*

### **Section 504 of the Rehabilitation Act of 1973.**

The Department of Agriculture (USDA) implemented section 504 of the Rehabilitation Act of 1973 on June 10, 1982, by issuing 7 CFR part 15b. Section 504's purpose is to ensure that no otherwise qualified person with a disability is solely by reason of his or her disability excluded from benefits, or subjected to discrimination under any federally assisted program or activity.

**Compliance Standard:** The Uniform Federal Accessibility Standards (UFAS). For more information see [www.access-board.gov/ufas/ufas-html/ufas.htm](http://www.access-board.gov/ufas/ufas-html/ufas.htm).

### **Highlights of section 504 Requirements.**

*In MFH projects ready for occupancy **on or before June 10, 1982:***

- Borrowers are encouraged to make 5 percent of the units fully accessible. (Structural changes in existing facilities may not be needed where other methods are effective in achieving program accessibility, such as reassignment of services to accessible buildings, assignment of aides to users, and delivery of services at alternate accessible sites. Borrowers are to use the method that provides the most integrated setting.)
- Borrowers must conduct self-evaluations and, if needed, develop transition plans. (Borrowers must make these documents available to the public or Agency upon request.)
- Borrowers must make common areas accessible when financially and structurally feasible. (Common areas include mailboxes, office, community room, trash area, playground, and laundry facilities.)
- When a qualified individual with a disability applies for admission, borrowers must make the unit accessible and usable to the individual.

*In MFH projects ready for occupancy **after June 10, 1982:***

- 5 percent of the units must be fully accessible.
- The mix of accessible units are to be comparable to the variety of other project units (i.e., 1, 2, and 3 bedrooms).
- All common areas must be fully accessible.
- Borrowers found in non-compliance with accessibility requirements of Civil Rights laws may be required to conduct "self-evaluations" and prepare "transition plans" or respond to other administrative and legal actions.

## Attachment A

### **Fair Housing Act.**

The Department of Housing and Urban Development (HUD) issued 24 CFR 100.205 to implement the Fair Housing Act, as amended, on January 23, 1989. The Fair Housing Act requires that buildings be constructed to be accessible to individuals with disabilities.

**Compliance Standard:** The Fair Housing Act/Accessibility Guidelines (FHA/AG). For more information see [www.hud.gov/fhe/fheo.html](http://www.hud.gov/fhe/fheo.html).

### **Highlights of Fair Housing Act Requirements.**

*In MFH projects ready for occupancy **on or before March 13, 1991:***

- FHA/AG architectural requirements do not apply, even during project rehabilitation.

*In MFH projects ready for occupancy **after March 13, 1991:***

- All first floor ground units in buildings with four or more dwelling units must be designed and constructed in a manner that is adaptable to individuals with disabilities.
- All units must be adaptable if there is an elevator.
- Covered MFH projects must have:
  1. An accessible entrance on an accessible route;
  2. Accessible public and common-use areas;
  3. Usable doors;
  4. Accessible routes into and through the dwelling unit;
  5. Accessible light switches, electrical outlets, and environmental controls;
  6. Reinforced bathroom walls, and
  7. Usable kitchens and bathrooms.

### **Americans with Disabilities Act (ADA).**

The Department of Justice (DOJ) issued regulations at 28 CFR parts 35 and 36 to implement the Americans with Disabilities Act (ADA). ADA prohibits discrimination on the basis of disability in areas of public accommodations. ADA does not apply to residential units.

**Compliance Standard:** Americans with Disabilities Act/Accessibility Guidelines (ADA/AG). For more information see [www.access-board.gov](http://www.access-board.gov).

### **Highlights of ADA requirements.**

*In MFH projects ready for occupancy **on or before January 26, 1993:***

- When public areas are altered, they must be altered to ADA/AG standards. (Public areas are those areas used by individuals other than tenants and their guests. This includes offices used to pay bills or to inquire about service or employment, public restrooms, and buildings used for voting or public meetings.)

*In MFH projects ready for occupancy **after January 26, 1993:***

- Public areas must be designed and constructed to ADA/AG standards.

**Grid to show MFH borrower architectural accessibility requirements of Civil Rights laws and how they affect eligibility for Agency loans (see summaries of laws on Attachment A).**

	<b>Section 504</b> Project ready for occupancy on or before 6-10-82	<b>Section 504</b> Project ready for occupancy after 6-10-82	<b>Fair Housing Act</b> Project ready for occupancy on or before 3-13-91	<b>Fair Housing Act</b> Project ready for occupancy after 3-13-91	<b>ADA</b> Project ready for occupancy on or before 1-26-93	<b>ADA</b> Project ready for occupancy after 1-26-93
<b>New Construction Loans</b>		Must meet UFAS requirements		Must meet UFAS and FHA/AG requirements		Must meet UFAS, FHA/AG and ADA/AG Requirements
<b>Rehabilitation Loans</b>	1. Encouraged to meet 5% requirement 2. Must meet common area requirement, if feasible 3. Must accommodate on request 4. Must have a self-evaluation 5. If required by self evaluation, must have a transition plan	Must meet above requirements or be addressed during rehabilitation	Not applicable	Must meet above requirements or be addressed during rehabilitation	Must meet UFAS, FHA/AG and ADA/AG requirements or be addressed during rehabilitation	Must meet above requirements or be addressed during rehabilitation
<b>Equity Loans</b>	Prior to the receipt of equity, must meet above requirements	Must meet above requirements or be addressed prior to receipt of equity	Not applicable	Not applicable (not eligible for equity at this time)	Not applicable	Not applicable (not eligible for equity at this time)
<b>A Transfer without Rehabilitation</b>	Prior to transfer, must meet above requirements	Must meet above requirements Prior to transfer	Not applicable	Must meet above requirements prior to transfer	Not applicable	Must meet above requirements prior to transfer
<b>Ongoing project operations - monitored by supervisory visits or compliance reviews</b>	Must meet the requirements above	Must meet above requirements and must have a self evaluation and transition plan if found in noncompliance	Not applicable	Must meet above requirements	Not applicable	Must meet above requirements

### **Summary of accessibility related items on the MFH physical inspection form**

*Use the Agency's MFH physical inspection form to identify if common areas and the apartment units designed and built to be fully accessible meet applicable accessibility guidelines. The MFH physical inspection form will be issued under a separate Procedure Notice (PN). The accessibility related items on the form are as follows:*

#### **Item 13 on the Worksheet for RHS MFH Exterior Physical Standards:**

##### **13. COMMON AREA ACCESSIBILITY**

- Accessible, designated handicapped parking spaces provided
- Handicapped parking space properly identified
- Common areas (mailboxes, office, community room, trash area, playground and laundry, room) are accessible through walks, ramps, landings, door lever handles, thresholds and widths
- Accessible appliances in laundry
- Mailboxes for accessible units at accessible heights
- Elevators or mechanical lifts are functional and kept in good repair (if installed)
- Common area switches, outlets, thermostats and controls at accessible heights
- Public restrooms have maneuvering room at sinks and toilets, grab bars and lever faucets, insulated pipes, and mirrors at accessible height

#### **Item 15 on the Worksheet for RHS MFH Interior Physical Standards:**

##### **15. FULLY ACCESSIBLE UNITS**

- Unit is accessible through walks, ramps, landings, floor coverings, door lever handles, thresholds and door widths
- Kitchens have lever faucets, maneuvering room at sinks and counters, accessible counter heights, controls and insulated pipes
- Bathrooms have maneuvering room at sinks, toilets and showers or tubs, grab bars and lever faucets, insulated pipes, and mirrors at accessible height
- Switches, outlets, thermostats and controls at accessible heights
- Functional emergency call system in bedroom and bathroom

**Notifying borrowers of the failure to meet responsibilities under Civil Rights laws**

*If the results of an Agency physical inspection indicate a finding or violation for Item 13 of the Worksheet for RHS MFH Exterior Physical Standards, "COMMON AREA ACCESSIBILITY," item 15 of the Worksheet for RHS MFH Interior Physical Standards, "FULLY ACCESSIBLE UNITS," or other relevant standard during a supervisory visit, include the following language in your post visit contacts with the borrower regarding your findings or violations:*

"Recent Agency monitoring of the subject project indicates that you are not currently meeting your responsibilities under applicable Civil Rights laws. Since project operating or reserve account funds may be required to address this situation, we request that you advise the Agency of how you intend to comply with the law. In addition to any penalties, liabilities or loss of tax credits that may result from legal action brought against you by third parties, continued non-compliance may result in your ineligibility to receive further loan funds from the Agency. You failed to meet the following:

1. COMMON AREA ACCESSIBILITY (Specify)
2. FULLY ACCESSIBLE UNITS (Specify)
3. Other (Specify)"

*If the results of an Agency compliance review indicate non-compliance with a Civil Rights law, include the following language in your post visit contacts with the borrower regarding their non-compliance:*

"Recent Agency monitoring of the subject project indicates that you are not currently meeting your responsibilities under applicable Civil Rights laws. Since project operating or reserve account funds may be required to address this situation, we request that you advise the Agency of how you intend to comply with the law. In addition to any penalties, liabilities, or loss of tax credits that may result from legal action brought against you by third parties, continued non-compliance may result in your ineligibility to receive further loan funds from the Agency. You are in non-compliance with the following: (Specify)"



### Self Evaluations and Transition Plans

On June 11, 1982, USDA issued 7 CFR part 15b, which required all borrowers to conduct *self-evaluations* within one year of the USDA regulation. In the event that structural changes were necessary, recipients were required to develop *transition plans* that set forth the steps necessary to complete such changes.

#### Who must conduct self-evaluations and develop transition plans?

- Borrowers of projects ready for occupancy on or before June 10, 1982
- Borrowers of projects ready for occupancy after June 10, 1982, where the borrower has been found in non-compliance with Civil Rights law (as a remedial action).
- Borrowers who have had complaints filed against them and the Agency determines it is necessary.
- Borrowers transferring ownership.
- Borrowers of projects receiving rehabilitation or equity loans, when the Agency determines it necessary.
- Borrowers receiving loans for new construction after January 1, 2001. The Agency will review the self-evaluation and any transition plan during the pre-occupancy conference.
- All state and local government borrower entities. (DOJ issued a regulation on July 26, 1991, which requires all State and local governments to conduct self-evaluations, unless they had already done so to meet the requirements of section 504.)

#### What standards do borrowers need to meet?

Regardless of when a project was ready for occupancy, all borrowers are required to have *policies and practices* that do not discriminate against persons with disabilities. Examples of policies and practices are provided on **Attachment C-1**. The architectural *accessibility standards* borrowers must meet will depend on when the project was ready for occupancy and what modifications are planned. See **Attachments A and A-1** for a summary of the architectural accessibility standards. In addition, many State and local governments have their own accessibility standards that also must be met. **Rural Development does not have the authority to waive any of the accessibility requirements.**

**What are the self-evaluation and transition plan requirements?**

*In accordance with 7 CFR Subpart 15b the following is required:*

**Self-Evaluation**

- (1) Evaluate, with the assistance of interested persons, including persons with disabilities or organizations representing persons with disabilities, its current policies and practices and the effects thereof;
- (2) Modify, after consultation with interested persons, including persons with disabilities or organizations representing persons with disabilities, any policies and practices that do not meet the requirements of this part;
- (3) Take, after consultation with interested persons, including persons with disabilities or organizations representing persons with disabilities, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices; and
- (4) To **maintain a record** of the self-evaluation for at least three years. The record must be made available for public inspection and be provided to the Agency upon request. The self-evaluation record must contain:
  - (a) **a list of the interested persons consulted,**
  - (b) **a description of areas examined and any problems identified, and,**
  - (c) **a description of any modifications made and of any remedial steps taken.**

**Transition Plans**

At a minimum, transition plans are required to:

- (1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to disabled persons;
- (2) Describe in detail the methods that would be used to make the facilities accessible;
- (3) Specify the schedule for taking the steps necessary to achieve full program accessibility and if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
- (4) Identify the person responsible for implementation of the plan.

**When structural changes are necessary, such changes shall be made within three years and as expeditiously as possible.**

**Examples of policies and practices to be addressed include:**

- How will applicants and tenants be made aware that the owner will provide reasonable accommodations (unless doing so would cause an undue/administrative burden)?
- How will requests for reasonable accommodations be handled and who is authorized to approve or deny any such requests?
- Does the project have a Telecommunication Device for the Deaf (TDD) or an *equally effective communication system*? (Note: If the complex has section 8 assistance from HUD, the complex is required to have a TDD)
- If the project has a TDD, is the public made aware that there is a TDD? For example, is the TDD telephone number given each time the project's telephone number is given?
- If the project relies on a relay service as an *equally effective communication system* (rather than having a TDD), who is the relay service operated by? Is the relay service available 24 hours a day and without any added cost to the disabled person?
- Have procedures been established to accommodate hearing and sight impaired applicants and tenants? Examples of methods the borrower might use include readers, sign language interpreters, Braille, etc.
- Does management give priority for fully accessible units to persons who are in need of the special design features of an accessible unit? Is priority given first to those living in the complex and then to persons on the waiting list?
- Before accessible units are temporarily rented to people who do not need the special design features, have there been diligent marketing efforts to market the units as accessible units? Have those efforts been documented? Are lease clauses used? Do marketing efforts continue after renting the unit to someone who does not need the special design features?
- Is management's policy for verifying a person's disability limited to only that which is needed to establish eligibility and is verification required only after a tenant or applicant has asked that their disability be considered by management?
- Does management provide their employees with civil rights training?
- When marketing an elderly project, has there been an effort to reach all eligible people? Persons with disabilities (of any age) are every bit as eligible as persons who are 62 or older. Marketing efforts should be designed to reach both population groups.
- Does the recipient notify the public that they do not discriminate on the basis of disability? Do materials published by the borrower contain such a notice? Use of the Equal Housing Opportunity logo is one means of doing so (the logo is the house with the equal sign and the words Equal Housing Opportunity underneath the house).
- Does management have a policy that permits persons with disabilities to have service and/or companion animals?
- Does management give persons with disabilities the same choices other applicants are given? For example, either first and second floor apartments.

### **Monitoring compliance with the Self-Evaluation and Transition Plan**

The Agency monitors MFH borrower compliance with Civil Rights laws through the compliance review process. Servicing Office staff who have been trained and designated will conduct the compliance review using the general format of Form RD 400-8. To assure compliance with the self-evaluation and transition plan requirements of Civil Rights laws, during the compliance review Agency staff will:

1. Visually inspect the project to determine if there are physical barriers.
2. Review the management plan to determine project management's method of informing tenants and applicants regarding requests for reasonable accommodations.
  - Visit and interview tenants to determine if the borrower has provided information and made reasonable accommodations upon request by the tenant.
3. Visit and interview tenants in the fully accessible units to determine:
  - If the tenant has need of the accessibility features of the unit and is an eligible occupant.
  - When the tenant is an ineligible occupant of the unit, if the tenant and borrower have executed a lease attachment that requires the tenant to move if an individual needing the handicapped features applies for occupancy.
4. Review the lease agreement, application and other documentation used by the borrower to determine if policies and procedures represent barriers to occupancy.
5. Review the self-evaluation plan and transition plan and compare the physical inspection to determine if there are barriers present that were not addressed or scheduled to be removed.
6. Where transition plans are scheduled to remove barriers over more than a one-year period, review the transition plan and the most recently approved budget to assure that borrower budgeting and the projects financial condition is supportive of the transition plan as written. Transition plans should include the potential cost of removing identified barriers.

**The Agency's response to findings of non-compliance.**

**When the compliance review determines the following:**

- The borrower has not completed a self-evaluation when required (see Attachment C).
- The borrower's self-evaluation does not adequately address required components.
- The borrower has not completed a transition plan when required by the self-evaluation.
- The borrower's transition plan does not adequately address required components.
- The borrower has failed to comply with their transition plan.
- The borrower is in-noncompliance with other Civil Rights law requirements.

**The Servicing Office takes the following actions:**

- On MFIS2, enter the appropriate finding under the Supervisory Activity, "Compliance Review" and provide descriptive comments.
- Notify the borrower in writing (include the statement provided in Attachment B-1) and provide 30 days to come into compliance.

If a borrower fails to bring themselves into compliance within 30 days, the Servicing Office will notify the State Civil Rights Coordinator/Manager (SCRC/M). The State Director will forward the issue of non-compliance to the National Office Civil Rights Staff.

The National Office Civil Rights Staff will notify the State Director if further review and processing of the finding either resolve the finding or require that it be forwarded to the USDA Civil Rights Staff or the Justice Department to resolve the non-compliance issue.

The SCRC/M will notify the State Office MFH Program Director and the Servicing Office of the disposition of the finding of non-compliance.

### **Summary of supervisory activities and findings modified on MFIS2**

*MFIS2 has been modified to include the new findings listed below. Review Attachment C for further discussion of self-evaluation and transition plan requirements, Attachment C-2 for a full description on compliance review findings, and Attachment B for the performance standards of item 15 of the worksheet for RHS MFH interior physical standards, "FULLY ACCESSIBLE UNITS" on the MFH physical inspection form.*

The following are the new findings now available on MFIS2.

#### **New Findings**

No self-evaluation  
Inadequate self-evaluation  
No transition plan  
Inadequate transition plan  
Failure to comply with transition plan  
Fully accessible units

The new findings are found on the following MFIS2 Supervisory Activities.

#### **Supervisory Activity**

#### **Finding**

COMPLIANCE REVIEW

No self evaluation  
Inadequate self evaluation  
No transition plan  
Inadequate transition plan

PHYSICAL INSPECTION TRIENNIAL

Fully accessible units

The new findings are also found on the following MFIS2 Supervisory Activities that include all findings.

#### **Supervisory Activity**

OTHER (inspection)  
SITE VISIT (GENERAL)  
CONTACT #1  
CONTACT #2  
CONTACT #3  
OTHER (review)

**Answers to current MFH program and Civil Rights related compliance questions.**

**1. Is the International Symbol of Accessibility (ISA) required to be on a MFH project sign?**

No. However, borrowers are encouraged to include the ISA on the project sign if:

- There are no physical barriers for someone wishing to inquire or apply for a service or benefit, and
- The project has an accessible route to fully accessible units.

**2. Is the Telecommunication Device for the Deaf (TDD) number required to be on the project sign?**

When project management communicates with hearing impaired applicants or tenants they must use either a TDD or an “equally effective communication system.” If a borrower uses a TDD number, the TDD number must be on the project sign. If a borrower uses an equally effective communication system, the borrower must document the process in their self-evaluation and let the public know how this is to be accomplished. However, the borrower is not required to post the relay service telephone number on the project sign. Borrowers with section 8/515 projects are required by HUD to use a TDD.

**3. Are service or companion animals that assist the disabled subject to MFH project “pet” rules?**

No. They are permitted occupancy under the Fair Housing Act and are defined as follows:

- *Service animal.* An animal with special training in helping an individual cope with a physical impairment that is necessary for a member of a tenant household to cope with a disability.
- *Companion animal.* An animal with no special training in helping an individual cope with a disability but is necessary for a member of a tenant household to cope with a disability.

It is important to note that under reasonable accommodation procedures, a borrower may negotiate service or companion animal occupancy rules with individuals on a case-by-case basis. It is not discriminatory or unreasonable for the borrower to request the tenant to accept responsibility for health and safety, sanitation, and liability for damages to the premises caused by the animal.

**4. Does an applicant needing special design features have priority for occupancy over a current tenant without a need for the special design features of a fully accessible unit?**

Yes. While tenants without a need for the special design features may occupy a fully accessible unit, prior to occupancy the tenant must agree to move to another unit in the project if a qualified individual needing the special design features applies for occupancy of the fully accessible unit. Borrowers are required to enter into a lease agreement with the tenant without a need for the special design features to assure that a legal right exists to require the tenant to move to another available unit in the project, when necessary. Refer to RD Instruction 1930-C, Exhibit B, VI E 3 d and VIII C 1.

**5. What are a few suggestions to improve marketing of fully accessible units?**

Before fully accessible units are rented to persons not in need of the special design features, borrowers must conduct a diligent and documented marketing effort to ensure that those in need of the special design features know about the availability for the units. Such contacts may include, area Commission on Aging, physical rehabilitation centers, hospitals and disabled veterans organizations. Borrowers are encouraged to use the handicap accessibility logo as a marketing tool on the project sign, in advertising, and on contact letters, leaflets and brochures. When a tenant not needing the design features occupies a fully accessible unit, borrowers are to continue their marketing efforts until a tenant needing the design features is found.

**6. How do borrowers meet UFAS numerical requirements for fully accessible units?**

In MFH projects ready for occupancy after June 10, 1982, UFAS standards require:

- At least 5 percent or 1 unit, whichever is greater, must be fully accessible. To meet the 5 percent minimum, borrowers must round up to the next whole unit. For example, a 24-unit MFH project must have at least 2 units (8.3 percent) fully accessible rather than 1 (4.2 percent).
- Fully accessible units must be comparable in variety to other project units. For example in a 24-unit project with 12 one-bedroom units and 12 two-bedroom units, 1 of the fully accessible units should be a one-bedroom unit and the other should be a two-bedroom unit.
- Rents for fully accessible units must be comparable to other same sized project units.
- If a project has more than one site, fully accessible units may not be clustered at one site, unless only one fully accessible unit is required.
- When a project has a wide variety of units (1, 2, 3 or 4 bedrooms), borrowers are not required to exceed the 5 percent requirement simply to have a fully accessible unit of each type.



## **7. Who pays for reasonable accommodations?**

If an eligible applicant or tenant makes a request for a reasonable accommodation, borrowers are to use project resources to complete and pay for the accommodation. A borrower may deny such a request only when the accommodation would cause an undue financial/administrative burden, or a fundamental change in operations. The borrower alone is responsible for the consequences of such a determination. If the borrower takes this position, the applicant or tenant must be permitted to make the requested change at their own expense (RD Instruction 1930-C, Exhibit B, paragraph VI D 3 b).

## **8. What type of reasonable accommodation is made?**

If an eligible applicant or tenant makes a request for a reasonable accommodation, the change to be made should be based on the tenant's assessment of their needs, even when the accommodation may vary from commonly accepted accessibility standards. All improvements should be done in a professional manner and meet local building code requirements.

## **9. When is it appropriate to make inquiries about a person's disability?**

An appropriate question for all applicants to an elderly MFH project is:

- “If you are less than 62 years old, are you eligible for occupancy based on your status as an individual with handicaps or disabilities?”

Regarding the issue of adjustments to income or priority for a unit with special design features, the application form should give the opportunity to make a request for the added benefit. For example, it would be appropriate to ask all applicants and tenants:

- “Do you wish to have priority for an apartment with special design features for persons with disabilities?”
- “Do you wish to claim a \$400 deduction from your income based on a disability?”

By phrasing questions in this manner, applicants are advised of the benefit and allowed to decide for themselves if they wish to disclose a disability. Once an applicant requests that their disability status be considered, inquiries can be made, but only to the extent necessary to verify eligibility. Project management should not attempt to make any determination concerning an applicant's disability.

**10. May a guardian sign a rental agreement on behalf of a qualified person with a disability?**

While there is no Federal law preventing a guardian from signing a rental agreement on behalf of a qualified person with disabilities, State law may vary. Each borrower should check with their legal counsel. To the extent individual state laws permit a guardian to sign a rental agreement, guardian signatures are to be accepted.

**11. What are the requirements for van accessible parking?**

The requirements vary based on when a project became ready for occupancy. See Attachment A and A-1 for a discussion of the applicable standards. The parking lot of all projects with public areas such as an on-site office, ready for occupancy after January 26, 1993, must be properly striped for van accessible parking. All projects with public areas ready for occupancy before January 26, 1993, must be striped for van accessible parking whenever the parking lot is re-striped.

**12. May a borrower allow a resident assistant to occupy a unit overnight to assist a tenant with a disability?**

Yes. When a tenant with a disability provides a physician's statement requiring resident assistant care in excess of the established time periods for visitors it would be a reasonable accommodation to the rules and policies to allow the resident assistant to reside in the unit in excess of established visitor's time. Further, if the need is for the resident assistant to live in the unit, it is a reasonable accommodation to rent a two-bedroom unit to a tenant at their request. The income of a resident assistant is not included in tenant household income.

**13. Is the "interested person(s)" who assists or is consulted during the borrower's preparation of their self-evaluation required to visit the project site?**

No. While interested persons, including persons with disabilities or organizations representing persons with disabilities must be consulted (see Attachment C); they are not required to conduct a site visit.

**14. Is the self-evaluation required to be maintained at the project site?**

Yes, if the project has an office. If there is no office, the borrower is still obligated to make the self-evaluation available to the public upon request. The public includes any applicant, tenant and the Agency. It is not reasonable for the borrower to expect the public to drive to a location other than the project to view the self-evaluation.

**15. Why will the Agency review a borrower's self-evaluation at the time of a pre-occupancy conference for all new loans made after the date of this AN?**

The Agency will review the self-evaluation primarily to assure that the borrower's occupancy policies and practices meet the requirements of Civil Rights laws (see Attachment C-1). While new projects are required to be built in accordance with accessibility requirements, the self-evaluation helps the borrower to assure that the requirements have been met before the project is occupied. Borrowers should look to their project architect to determine that all accessibility requirements of Civil Rights laws have been met.

**16. What can be done with projects ready for occupancy after June 10, 1982, that were not built in accordance with UFAS standards, where it is either structurally impractical or financially infeasible to make the required changes?**

Typically, the borrower should seek guidance from their project architect before making this determination. The Agency will need documentation that it is structurally impractical from a knowledgeable source. For example, in a project built using a split foyer design, it may be structurally impractical to make changes. The borrower might try to establish a referral agreement with another project in the local market area with a fully accessible unit. If no referral agreement is possible to make the program accessible, the Agency may administratively recognize that borrower is unable to address their outstanding non-compliance issues. In this case, all avenues have been explored, and the Servicing Office will document the case file to fully explain the situation and the borrower's attempts to resolve the problem, remove the finding(s) from MFIS2 and discontinue reporting the situation through the post supervisory visit and compliance review reporting process.

In some instances, a borrower may claim that a project is not able to meet UFAS standards because the project's financial condition is such that the change would create an undue financial burden. For example, the project is located in a poor rental market and rents are insufficient to address capital needs. While the Agency has no mechanism for waiving the requirements of UFAS standards for financial reasons, the borrower may request a waiver from the Secretary of Agriculture. For such a waiver, the borrower must document the financial condition of the project as well as attempts to seek local, state, private and Federal funding for grants or loans to correct the condition. As of the date of this AN, no such waiver has been granted.

**These issues are not meant to cover all situations regarding accessibility. Project Architects, Borrowers, Inspectors, and Rural Development staff should also be familiar with any State or local requirements. Rural Development servicing staff are to consult with their MFH State Office Staff, SCRC/M and the Program Support Staff on issues regarding accessibility.**